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Alberta Environmental Appeal Board

1995 Annual Report



September 1, 1994 to December 31, 1995

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Office of the Chairman

February 16, 1996

The Honourable Ty Lund
Minister of Environmental Protection
323 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Lund:

Re: Environmental Appeal Board - 1995 Annual Report

I respectfully submit the 1995 Annual Report of the Environmental Appeal Board for the period covering September 1, 1994 to December 31, 1995.

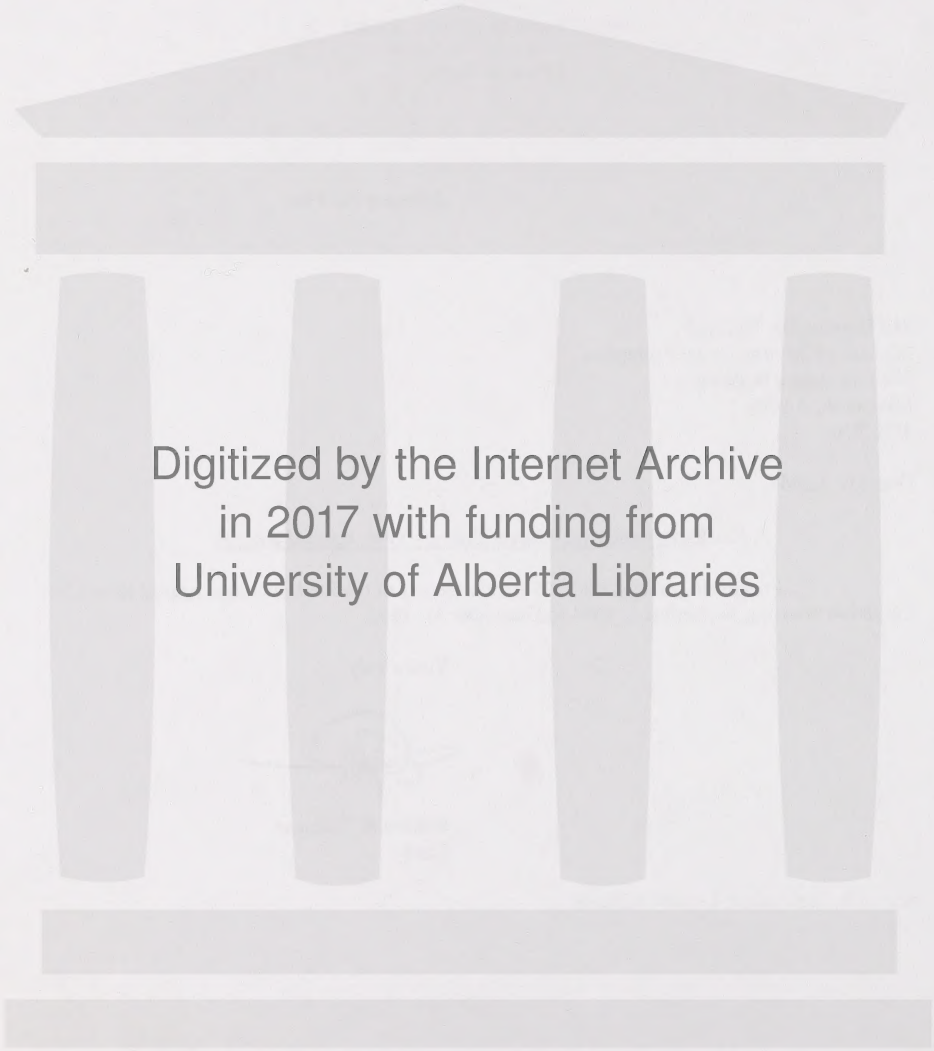
Yours truly,

William A. Tilleman
Chair

cc: P. Melnychuk, Deputy Minister

400, Alberta Treasury Branches Plaza, 9925 - 109 Street, Edmonton, Alberta, Canada T5K 2J8 Telephone 403/427-6207 Fax 403/427-4693

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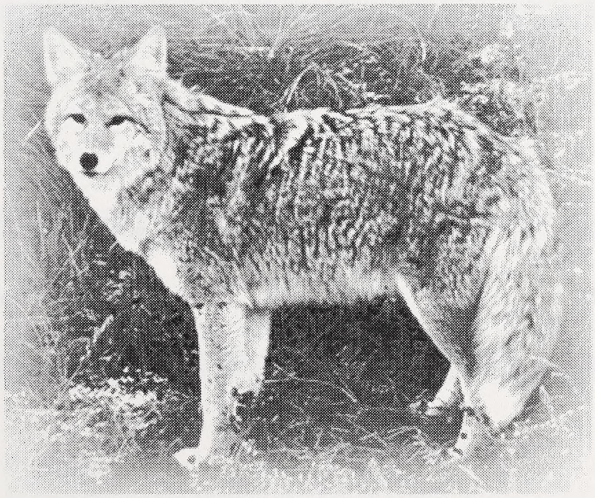


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Alberta Environmental Appeal Board

1995 Annual Report



September 1, 1994 to December 31, 1995

ISSN# 1206-8063

Table of Contents

	Page Number
Message From the Chair	1
Mission Statement	3
Overall Objectives	3
Corporate Objectives	4
Background	6
The Act and Regulations	8
Board Membership	9
Staff and Office Accommodation	10
Finances	10
Workload	11
Board Documents	12
Rules of Practice	13
Table 1 - Summary of Appeals Filed From September 1, 1994 - December 31, 1995	14
Appendix A - Rules of Practice	23
Appendix B - Procedures Flowchart	43

Table of Contents

Message from the Chair

The government of Alberta proposed an environmental appeal process in 1988. In response to a specific incident and with increasing public environmental awareness, the Alberta government asked a special panel to make recommendations including administrative mechanisms to strengthen the enforcement of Alberta's environmental statutes. The Environmental Appeal Board was conceived primarily as a body that would offer recourse to regulated industries that were complaining that licensing requirements were too strict and to members of the public that were concerned with the licensing of projects that might, through their operations, have a negative impact on the environment.

In general, governments create environmental appeal boards in recognition of the fact that courts are not suited or trained to handle particular technical or scientific issues or certain policy questions, such as giving effect to environmental preservation or goals of sustainable development. Environmental appeal boards are expected to offer speedier and less expensive results without jeopardizing principles of fairness and justice.

Following extensive public consultation, the *Environmental Protection and Enhancement Act* (EPEA) came into force on September 1, 1993. One of the Act's cornerstones is the guarantee of public participation in decisions affecting the environment. This public involvement includes the right, when directly affected, to appeal certain decisions. The Alberta Environmental Appeal Board was created to provide for this fair and independent review of a broad range of decisions made under EPEA. The Act regulates municipal and industrial activities with the potential to adversely affect the environment and also includes enforcement tools ranging from orders to administrative penalties. Providing parties with the right to appeal environmental decisions fosters public confidence in the entire environmental regulatory scheme.

In order to meet the demands of the industry and the public, early in my term as Chairman, several corporate objectives were identified to meet the legislative requirements that had been established for the Board. To date, the Board has made great strides in accomplishing these objectives. Examples include:

1. **Providing feedback and direction for EPEA by establishing sound appeal procedures and by issuing clear and consistent decisions on the new statutory provisions.**

2. **Ensuring the availability of Board decisions, rules and procedures to parties that appear before the Board so as to achieve greater understanding, reduce unnecessary appeals and generate informed suggestions for future change.**

3 **Decrease the time needed to process appeals.**

4 **Focus on dispute resolution options in the pre-hearing meetings and monitor their success.**

5 **Monitor and analyse the operation of the Act, the regulations, and where necessary, to be able to recommend sound and well-documented legislative changes.**

6 **Develop closer contacts with the various interest groups to keep abreast of industry, public and government concerns and proposals for change. Use the process of consultation with the general public on such issues as the establishment of rules and procedures.**

7 **Formalize the long-range planning and budget review process for the Board.**

In summary, the environmental appeal process was established to ensure objectivity and fairness are integrated into decision-making, taking into account public concerns and a commitment to sustainable development. In accomplishing these objectives, the Alberta Environmental Appeal Board has a multi-faceted task, which includes making reports and recommendations to the Minister of Environmental Protection on the following: appeals from approvals required under the Act for a broad range of activities; appeals from decisions made by a Director including the issuance of environmental protection orders; the assessment of environmental issues and cases involving adverse environmental impact on air, water and soil; and hearing appeals related to hazardous wastes and contaminated sites.

I look forward to the upcoming years and the challenges that will be put forth to the Board, as well as meeting these challenges.

Mission Statement

The Environmental Appeal Board intends to provide fair, impartial and efficient resolution of all matters before it while ensuring that the protection, enhancement and wise use of Alberta's environment is maintained, consistent with the purposes of the *Environmental Protection and Enhancement Act*.



Overall Objectives

In discharging its mission, the Board strives to accomplish the following goals:

- **to achieve fairness and unbiased results, having regard for the purpose of the Act and the interests of all parties to an appeal;**
- **to achieve correctness and precision in decision-making, having regard for the different submissions that will be made during appeals; and**
- **to make energetic and productive use of the Board's resources in meeting the needs of the parties.**

Corporate Objectives

1. Provide a clear direction for the *Environmental Protection and Enhancement Act* by establishing sound appeal procedures and by issuing clear and consistent decisions on the new statutory provisions.

2. Develop rules of practice and procedures for dealing with matters before it.

3. Ensure the availability of Board decisions, rules and procedures to parties that appear before the Board so as to achieve greater understanding, reduce unnecessary appeals and generate informed suggestions for future change.

4. Record Board rules and procedures in an accessible manner to ensure consistency of application, to reduce time taken in processing appeals and to focus Board decisions on protecting procedural fairness where possible.

5. Decrease the time needed to process appeals.

6. Consolidate individual appeals where possible.

7. Institute a case monitoring system to ensure that all appeals proceed in a timely manner.

8. Provide access to the Board for all parties (businesses, government and the public), including telephone access for out-of-town parties.

9. Experiment with dispute resolution options in the pre-hearing meetings and monitor their success.

10. Train Board members and staff to mediate appeals that are amenable to settlement.

11. Maintain Board documents, rules and procedures in an updated form eliminating inaccurate or outdated information and providing both Board staff and Board clientele with easy access to the records of outstanding appeals.

12. Monitor and analyze the operation of Part 3 of the Act and the regulations, where necessary, to be able to recommend sound and well-documented legislative changes.

13. Maintain constant communications within the Board through monthly meetings.

14 Develop closer contacts with the various interest groups to keep abreast of industry, public and government concerns and proposals for change. Use Board members in the process of consultation with the general public on issues of Board structure, administration and updates on the Board's work, including the establishment of rules and procedures.

15 Develop staff resources in relation to the administration of Part 3 of the Act.

16 Utilize fair procedures to reduce the instances of Board decisions being challenged in the courts.

17 Review and rationalize as necessary Board staffing requirements and members' involvement once ongoing Board rules, procedures and responsibilities are established.

18 Complete the acquisition of fax, word processing and computer facilities for Edmonton and Calgary and fully integrate those facilities into the Board's day-to-day activities.

19 Set up a small Environmental Appeal Board office in Calgary to better serve southern Albertans at the lowest possible cost .

20 Formalize the long-range planning and budget review process for the Board.

21 Operate the Board within its budget.

Background

An environmental appeal process for Alberta was first proposed in early 1988 by the Review Panel on Environmental Law Enforcement. The panel had been asked by the Alberta Government to make recommendations to strengthen the enforcement of Alberta's environmental statutes. With respect to licence appeals, this panel recommended that:

- **an appeal process or mechanism be established for an appeal from a permit or licence decision of the Director of Standards and Approvals to be made to avoid the imposition of unrealistic terms and to ensure that licence negotiations not carry on indefinitely;**
- **standing to appeal be available to the applicant and to third parties who can demonstrate both an interest in and a potential impact from the applicant's operation;**
- **the appeal board be made up of representatives from government, industry and the public;**
- **the appeal board have jurisdiction to hear all appeals of licences issued pursuant to environmental statutes;**
- **the appeal be heard within a specified number of days; and**
- **further appeal to the courts be restricted to questions of law or jurisdiction.**

In June of 1990, a discussion draft of the *Environmental Protection and Enhancement Act* was released by the Honourable Ralph Klein, then Minister of the Environment. It contained several sections establishing "boards of review" (similar to those under the Canadian Environmental Protection Act) to hear appeals of certain specified matters. The government appointed the Environmental Legislation Review Panel, chaired by Brian Evans, Minister of Justice, to provide members of the public the opportunity to express their views. The panel held public meetings throughout the province in the fall of 1990 and received both oral and written submissions. It submitted its report in January of 1991 and the concept of an appeal mechanism was confirmed.

The discussion draft was redrafted and introduced in the Legislative Assembly as Bill 53 in June of 1991. Bill 53 changed "boards of review" to an "Environmental Appeal Board" similar to the one we see today. In May of 1992, following further public input, the Act was re-introduced as Bill 23 and received third reading and

Royal Assent on June 26, 1992. It was proclaimed effective September 1, 1993, and the Environmental Appeal Board was created as of that date.

The Board was conceived as a body that would offer an unbiased and impartial approach to regulated industry. The panels reviewing proposals for legislative change were initially concerned that regulated industries believed they were being treated unfairly by governmental regulators and were being required to meet more stringent requirements than were justifiable in the circumstances. However, in the course of the development of the Act and its regulations, it became apparent that members of the public were also concerned with the licensing process and looked to an independent appeal process as a way to have a say in the licensing of the projects that might, through their operations, have a negative impact on the environment. The government responded to these concerns and, as a result, the Board is now in place to hear appeals and make decisions or recommendations in accordance with its powers under the Act.

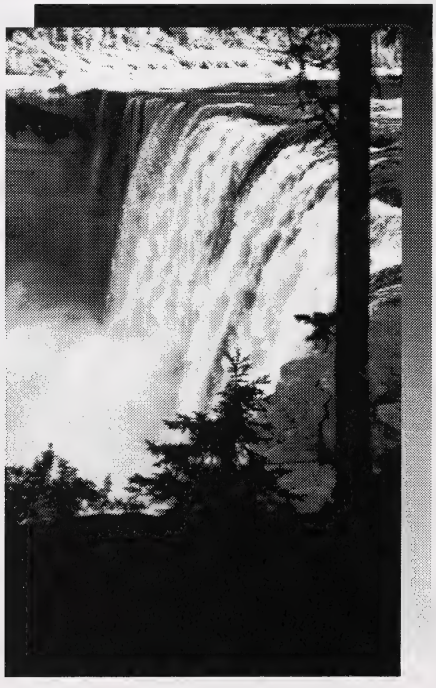
The Board replaces several discrete appeal processes that were available under statutes repealed by the Act.

1. **Appeals under the Agricultural Chemicals Act, to the Agricultural Chemicals Advisory Committee.**
2. **Appeals of chemical control orders issued under the Hazardous Chemicals Act, to the Hazardous Chemicals Advisory Committee.**
3. **Appeals of stop sale orders and depot operation stop orders issued under the Beverage Container Act, to the Minister and the Environment Council of Alberta for inquiry.**
4. **Appeals under the Ground Water Development Act, to an appeal board established by the Minister.**
5. **Appeals of stop orders issued under the Land Surface Conservation and Reclamation Act, to the Minister and the Environment Council of Alberta for inquiry.**
6. **Appeals of stop orders issued under the Clean Water Act and the Clean Air Act, to the Minister and the Environment Council of Alberta for inquiry.**
7. **Appeals of stop orders issued under the Department of the Environment Act, to the Minister and the Environment Council of Alberta for inquiry.**
8. **Appeals of clean-up orders issued under the Litter Act, to review committees appointed by the Minister.**

The Act and Regulations

The provisions relating to the Board are found in Part 3 of the Act. The regulations that provide specifics on the Board are the Environmental Appeal Board Regulation and the Environmental Protection and Enhancement (Miscellaneous) Regulation. The Board has statutory authority to hear appeals of administrative decisions made on matters regulated by the Act. Much attention has been focused on the ability of the Board to hear appeals in connection with approvals, but the Board's jurisdiction extends throughout the Act.

Generally, the Board has the power to make recommendations to the Minister of Environmental Protection on matters brought before it. The Minister makes the final decision. On matters relating to requests for confidentiality and administrative penalties, the Board makes the final decision. In carrying out its functions, the Board has all the powers of a commissioner under the *Public Inquiries Act*, including the ability to retain experts to assist with matters before the Board and to compel persons or evidence to be brought before the Board. Although it is not subject to the provisions of the Administrative Procedures Act, the Board has an obligation to operate in accordance with the principles of natural justice. The Board does not replace or eliminate the right of Albertans to make appeals to the courts consistent with normal common law practice.



Board Membership

Members of the EAB are appointed by Cabinet (the Act, s. 83(1)). Four members were appointed in 1993 with an additional member added in 1994. All members are part-time members and are paid on a per diem basis (set by Order in Council No 769/93) and are reimbursed for their expenses. When there is an appeal, it is normally heard by a panel of the Board consisting of three Board members.

The Minister decided to commence operations of the Board by appointing a minimum number of persons - a chair, vice-chair and two members, all on a part-time basis. Through the Environmental Protection Advisory Committee, which represents and liaises with some 30 provincial interest groups and industry organizations, the Minister invited applications from suitably qualified individuals.

Those applications were received and processed by the Public Service Commissioner's office, and the interviews were conducted by a selection committee chaired by Dr. Natalia Krawetz, then Chief Executive Officer of the Environment Council of Alberta. The selection committee reported to the Minister. The Order in Council appointing the Board members was signed on August 25, 1993, with all appointments effective September 1, 1993 for a one-year period. In August, 1994, the cabinet extended the terms and appointed an additional member whose application the original selection committee approved in 1993.

The chair of the Board is Dr. William Tilleman, a Calgary environmental lawyer and adjunct professor at the University of Calgary Faculty of Law. Dr. Tilleman holds a J.S.D. from Columbia University, New York and has acted for government, private interests, and administrative Boards. The other current Board members are Max McCann, a businessman from St. Albert and former chair of the Public Health Advisory and Appeal Board, Joan Copp, an Edmonton environmental lawyer and counsel at the law firm of Lucas Bowker & White, Anne Naeth, who is a professional biologist and an agrologist, who is a Professor in the Department of Renewable Resources, Faculty of Agriculture, Forestry and Home Economics at the University of Alberta, John Ogilvie of Priddis, who is a semi-retired Ph.D. in Metallurgy with broad industrial experience in North America.

Staff and Office Accommodation

The Board has two full-time staff members. One serving as the Board Secretary of the Board, and the other is the office administrator. Temporary secretarial assistance is retained as required.

In April 1995, the Board moved to a new location in the Alberta Treasury Branches Plaza. The purpose of the Board's move from the Pacific Plaza location to the Alberta Treasury Branches Plaza was to ensure the appearance of fairness, impartiality, and independence of the Environmental Appeal Board from other Boards whose decisions are reviewed.

The Board currently occupies part of the 4th floor in the Alberta Treasury Branches Plaza, at 9925 - 109 Street. The Board moved to the Alberta Treasury Branches Plaza in April 1995 because of lack of space in its previous location. This new space allows the Board to conduct public meetings and hearings within its own location and therefore not require the leasing of a larger facility.

Finances

The Board's 1994/95 budget was increased in two respects to more accurately reflect its full costs. First, the Board's operations were extended to a twelve-month basis. Second, the salaries and benefits for the two full-time staff members were transferred from the Office of the Deputy Minister to the Environmental Appeal Board. As a consequence, the annual budget for the Board increased to $369,000, or $30,750 per month on a pro-rated basis. The actual expenditures in 1994/95 were $365,000.

In the first five months of this fiscal year, the Board's accrued expenditures totalled approximately $128,720 compared with a pro-rated budget of $153,750. Overall, during the Board's second year of operations, it has been able to remain well within budget of $469,000. The Board predicts that it will be able to stay within its new budget, even with the increased number of appeals.

Workload

Increasingly stringent environmental standards and increasing enforcement of environmental laws have resulted in a continuing increase in the number and complexity of appeals to the Board. In addition, the increased interest of the public in the issues before the Board is reflected in more private appeals being filed than was originally expected. This requires more of the members' time to hear and decide matters that involve complex legal and scientific issues. These hearings are conducted in a timely manner.

During this period, the Board received 56 appeals. Twenty-four pertained to approvals (including amendments and refusals), 19 to enforcement actions, 9 to reclamation certificates, 2 to refusals of beverage container depots, 2 to matters outside the Board's jurisdiction. Details with respect to these 56 appeals are set out in Table 1 which is appended to this report.

Of the 56 notices of objection received, as of the end of December 1995; twenty-six were withdrawn by the appellants; 6 were resolved by the parties with the Board serving as the mediator; 12 were dismissed by the Board; 1 was denied in a recommendation to the Minister following a public hearing; 1 appeal was allowed by the Board; 1 file was closed by the Board; and 9 still are in process.

The Board is facing an increased volume of appeals. Appeals under the new Water Management Legislation and landfill issues which has just been transferred to the *Environmental Protection and Enhancement Act* (from the Public Health Act) will increase the amount of appeals that will be brought before the Board.

Board Documents

The Board's decisions and recommendations are public documents and may be viewed at any of the following locations:

- **Environmental Law Centre, 10350 - 124 Street, Suite 201, Edmonton**
- **Alberta Environmental Protection, 6th floor, Bramalea Building, 9920 - 108 Street, Edmonton**
- **John A. Weir Memorial Law Library, University of Alberta**
- **Law Library, University of Calgary**
- **Canadian Institute of Resources Law, 3330 Professional Faculties Building, Block B, University of Calgary**
- **Canada Law Book Inc., 240 Edward Street, Aurora, Ontario, L4G 3S9**
- **Canadian Environmental Law Reports, 2075 Kennedy Road, Scarborough, Ontario, M1T 3V4**
- **Western Legal Publications, 301 One Alexander Street, Vancouver, British Columbia, V6A 1B2.**

Additionally, the decision and recommendation reports are available through Quick Law database. They are reported in the Environmental Law Digest and are posted on the Board's computerized bulletin board service.

In its first year, the Board distributed more than 4,000 fact sheets that provide information about the Board and explain its jurisdiction. The Legal Education Society of Alberta agreed to publish a practitioner's manual for the Board — at no cost to the Board. This publication is now available through the Legal Education Society of Alberta, 2610, Canada Trust Tower, 10104 - 103 Avenue, Edmonton, Alberta, T5J 0H8.

Rules of Practice

In May 1994, the Board identified the need to establish Rules of Practice to assist laypersons to understand the Board and its procedures. As provided for in section 87(8) of the Act, the Board drafted a set of rules and sent them to some 40 parties for comment. These groups and individuals represented industry, environmental organizations, the general public, government departments and the legal community. The Board reviewed the comments and suggestions it received, and made a number of changes to the document. The Rules of Practice are now finalized and publicly available. A copy is appended to this report.



Appeals Received

Table 1

From September 1, 1994 - December 30, 1995

Date Filed / Appellant(s)/ Location	Subject	Status
September 14, 1994		
Leonard Semack, Sexsmith	Issuance of reclamation certificate (94-010)	Hearing held on May 31/95; Board's Report and Recommendations approved by the Minister. June 29/95
September 19, 1994		
Sarg Oils Ltd., Milk River	Environmental Protection Orders re: 16 well sites (94-011(01-16))	Appeals dismissed; Board's decision is undergoing a judicial review in Court of Queen's Bench. May 11/95
September 20, 1994		
J. Darryl Carter on behalf of a group of landowners in the Sexsmith area	Approval issued to Conwest Exploration Co. Ltd. to construct and operate a sour gas processing plant (94-012)	Judicial review action resulting in decision by Justice wilkins (August 31/95) that Board continue with jurisdiction issues and hearing of appeal if necessary. December 8/94
October 21, 1994		
Doug Blatter, Warner	Refusal of an application to operate a beverage container depot (94-013)	Hearing held on January 31/95; Board's Report and Recommendations approved by the Minister. March 24/95

Appeals Received

Table 1

Date Filed Appellant(s)/ Location	Subject	Status
November 3, 1994		
Murray Williams, Eckville	Issuance of reclamation certificate (94-014)	Hearing held on June 9/95; Board's Report and Recommendations approved by the Minister. Board's decision is undergoing judicial review in Court of Queen's Bench.
November 8, 1994		
TriWaste Reduction Services Inc. Calgary	Environmental Protection Order re: improper disposal of contaminated materials (94-015)	Appeal resolved by the parties; notice of objection withdrawn by appellant. May 29/95
November 17, 1994		
George Sproule, Bentley	Issuance of reclamation certificate (94-016)	Appeal resolved by the parties; notice of objection withdrawn by appellant. May 9/95
November 28, 1994		
Martha Kostuch, Rocky Mountain House	Amending approval issued to Alberta Cement Corporation to extend the date for commencement of construction (94-017)	Appeal dismissed for lack of standing; Board's decision is undergoing judicial review win Court of Queen's Bench. August 23/95
January 10, 1995		
William Sullivan, Provost	Issuance of reclamation certificate (95-001)	Withdrawn by appellant. March 24/95

Appeals Received

Table 1

Date Filed Appellant(s)/ Location	Subject	Status
January 10, 1995		
Randall Lawrence Edmonton	Amending approvals to Zeidler Forest Industries Ltd. for the addition of a new emission source (veneer dryer) (95-002.1)	Appeals filed by Lawrence and Logan were dismissed for lack of standing. May 11/95
January 12, 1995		
John Logan, Edmonton	Amending approval to Zeidler Forest Industries Ltd. for the addition of a new emission source (veneer dryer) (95-002.2)	Appeals filed by Lawrence and Logan were dismissed for lack of standing. May 11/95
January 13, 1995		
Roy Hanson, Cadogan	Issuance of reclamation certificate (95-003)	Ongoing
January 19, 1995		
Ove Aasen, Provost	Issuance of reclamation certificate (95-004)	Appeal resolved by the parties; Board's Report and Recommendations approved by Minister. May 17/95
January 26, 1995		
Muriel Blume, Hayter	Approval issued to PanCanadian Petroleum Ltd. for oil production sites (95-005)	Withdrawn by appellant. March 29/95

Appeals Received

Table 1

Date Filed Appellant(s)/ Location	Subject	Status
January 26, 1995 Ed Graham, Fort Assiniboine	Approval issued to chem-Security (Alberta) Inc. to operate FBD incinerator at Swan Hills waste treatment plant (95-006.1)	Withdrawn by appellant. June 1/95
February 8, 1995 Richard Secord representing the Lesser Slave Lake Indian Regional Council	Approval issued to Chem-Security (Alberta) Inc. to operate FBD incinerator at Swan Hills waste treatment plant (95-006.2)	Appeal dismissed for lack of jurisdiction. Board's decision is undergoing judicial review in Court of Queen's Bench. August 23/95
February 8, 1995 Brian Staszenski & Myles Kitagawa, representing the Environmental Resource Centre & the Toxics Watch Society	Approval issued to Chem-Security (Alberta) Inc. to operate FBD incinerator at Swan Hills waste treatment plant (95-006.3)	Appeal dismissed for lack of jurisdiction. August 23/95
February 14, 1995 Henry Budney, Boyle	Extension of approval issued to Millar Western Industries Ltd., Boyle (95-007)	Withdrawn by appellant. March 27.95
February 23, 1995 Connie Boldt representing the Hazeldean Community League, Edmonton	Amending approvals to Zeidler Forest Industries Ltd. for the addition of a new emission source (veneer dryer) (95-002.3)	Appeal resolved by the parties on June 23/95; Board's Report and Recommendations approved by Minister. July 6/95

Appeals Received

Table 1

Date Filed / Appellant(s)/ Location	Subject	Status
February 27, 1995		
Wendy Francis representing the Canadian Parks & Wilderness Society Calgary	Decision that Limestone Valley Resort near Canmore is not required to undergo an environmental assessment (95-008.1)	Appeal dismissed. March 28/95
March 3, 1995		
Mike McIvor representing the Bow Valley Naturalist, Banff	Decision that Limestone Valley Resort near Canmore is not required to undergo an environmental assessment (95-008.2)	Appeal dismissed. March 28/95
April 26, 1995		
Rodney A. Keller, Cochrane	Approval issued to M.D. of East Peace No. 131 to operate a sand and gavel pit (95-009)	Hearing held on November 1/95; Board's Report and Recommendations sent to Minister; Minister confirmed original decision of Director. December 1/95
June 12, 1995		
Ross, Simpson, et al, Cochrane	Approval issued to the Mayor of the Town of Cochrane to construct a storm water management system to service the West Terrace Subdivision (95-010)	Withdrawn by appellant. September 8/95
July 4, 1995		
R.K. Valgardson, Taber	Approval issued to Riverbend Rock Products for a sand and gravel pit (95-011)	Withdrawn by appellant. July 26/95

Appeals Received

Table 1

Date Filed	Appellant(s)/ Location	Subject	Status
July 4, 1995	Victoria Olekshy-Wallace et al, Edmonton	Issuance of reclamation certificate (95-012)	Hearing held on November 1/95; Board's Report and Recommendations approved by the Minister. December 7/95
July 14, 1995	Donald C. Fawcett, Consort	Issuance of reclamation certificate (95-013)	Appeal adjourned until June 30/96
August 8, 1995	John Sheehan representing the Friends of the Peace, Peace River	Amending Approval issued to Daishowa-Marubeni International Ltd. to alter monitoring requirements (95-014)	Withdrawn by appellant. November 8/95
August 10, 1995	Christian U. Zobel, Edmonton	Approval issued to Lafarge Construction Materials for a sand and gravel pit (95-015)	Withdrawn by appellant. October 31/95
August 17, 1995	John Malinski, Edmonton	Environmental Protection Order re: improper storage of chemicals (95-016)	Withdrawn by appellant. August 29/95
August 21, 1995	Barbara Malinski, Edmonton	Environmental Protection Order re; improper storage of chemicals (95-016)	Withdrawn by appellant. August 29/95

Appeals Received

Table 1

Date Filed Appellant(s)/ Location	Subject	Status
August 21, 1995 Cecil M. Yarmoloy, Tofield	Approval issued to Town of Tofield for a wastewater system (95-017)	Withdrawn by appellant. September 11/95
September 6, 1995 Larry McLeod Caroline	Amending approval issued to Shell Canada Ltd. for a reduction in flue gas temperature (95-018.1)	Appeal resolved by the parties; Board's Report and Recommendations approved by Minister. December 12/95
September 6, 1995 Don Petersen representing Mountain View Land Holders Group, Sundre	Amending approval issued to shell Canada Ltd. for a reduction in flue gas temperature (95-018.2)	Appeal resolved by the parties; Board's Report and Recommendations approved by Minister. December 12/95
September 26, 1995 Gwen A. McKendrick, Cochrane	Approval issued to Foothills Water Utility Corp. for a waterworks system (95-019)	Ongoing
October 27, 1995 Custom Environmental Services Ltd., Edmonton	Approval issued to the company for the operation of a hazardous waste transfer, blending and storage facility (95-020)	Hearing held on January 15, 16 and 17, 1996. Report and Recommendations sent to Minister. February 14/96

Appeals Received

Table 1

Date Filed	Appellant(s)/ Location	Subject	Status
November 1, 1995	Darlene Orsten, Fort Saskatchewan	Approval issued to Shell Canada with respect to the operation of the Scotford complex (95-021)	Ongoing
November 29, 1995	Patricia Turanich, Fort Saskatchewan	Application made by TBG Contracting Ltd. (95-022)	File closed January 4/96
December 6, 1995	Frank Jessa, Airdrie	Refusal of an application to operate a beverage container depot (95-023)	Ongoing
December 14, 1995	Grant Vipond, Calgary	Issuance of reclamation certificate (95-024)	Ongoing
December 20, 1995	Ed Graham, Fort Assiniboine	Approval issued to Chem-Security (Alberta) Ltd. to operate the Alberta Special Waste Treatment Centre (95-025.1)	Ongoing
December 21, 1995	Richard Secord representing the Lesser Slave Lake Indian Regional Council	Approval issued to Chem-Security (Alberta) Ltd. to operate the Alberta Special Waste Treatment Centre (95-025.2)	Ongoing

Alberta Environmental Appeal Board

Rules of Practice
Appendix A

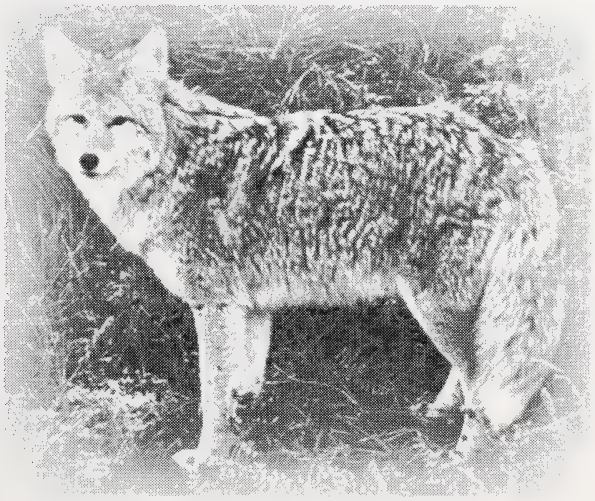


Table of Contents
September 1994 Rules of Practice

		Page Number
	Introduction	**25**
	General	
A	Definitions	**26**
B	Conduct	**27**
C	Precedent	**27**
D	Miscellaneous	**28**
E	Notice of Appeal	**28**
F	Review by the Board	**29**
G	Request for Information	**29**
H	Determination of Issues	**30**
I	Motions	**30**
J	Preliminary Meeting	**30**
K	Site Visit	**31**
L	Notice of Hearing	**31**
M	Third Party Intervention	**32**
	The Pre-Hearing Meeting	
A	General	**33**
B	Facilitation	**33**
C	Procedural Matters	**34**
	The Hearing	
A	Written Submissions	**35**
B	Venue	**35**
C	Swearing of Evidence	**35**
D	Opening Statements	**36**
E	Order of Presentation	**36**
F	Expert Witnesses	**37**
G	Evidence: Admissibility	**37**
H	Evidence: Confidential and Sensitive Information	**38**
I	Evidence: Written Testimony	**38**
J	Evidence: Cross-examination	**38**
K	Burden of Proof	**39**
L	Closing Arguments and Briefs	**39**
M	Closing of the Record	**39**
N	Failure to Attend Proceedings	**40**
O	Costs	**40**
P	The Board's Report	**41**

Introduction

These are the Rules of Practice of the Alberta Environmental Appeal Board which are contemplated by section 87 of the *Environmental Protection and Enhancement Act*.

The Act and the corresponding Regulation set out the formal requirements of an appeal and what the Board must do when it receives an appeal. In addition, the Act confers on the Board all the powers of a commission of inquiry under the *Public Inquiries Act*. The purpose of these Rules of Practice is to indicate how the Board will exercise its powers to deal with appeals.

The Board wishes to stress that its procedures will have to be flexible. Where any matter arises during the course of any proceeding that is not envisioned by these Rules, the Board will do whatever is necessary to enable it to adjudicate effectively and completely on the appeal. Additionally, the Board will dispense with compliance with any part or all of a particular rule if, in its opinion, the circumstances so require, and it will issue specific directions to govern such cases. In all cases, the Act, Regulation and other statutory provisions must be compiled with and will override these Rules in case of conflict.

The Board intends to use these Rules of Practice to fulfill the spirit of the Act and Regulation. Every effort will be made to process appeals in a timely fashion in accordance with the principles of natural justice, including issuing decisions expeditiously. The Board expects all parties to co-operate in the discharge of its mandate.

General

Definitions

In these Rules,

"Act" means the *Environmental Protection and Enhancement Act*, (S.A. 1992, ch. E-13.3, as amended);

"appellant" means the person who files a notice of appeal that results in an appeal;

"Board" means the Environmental Appeal Board established under sec. 83 of the Act;

"Chair" means the Chair or Vice-chair of the Board and includes any member of the Board acting as chair from time to time;

"Minister" means the Minister of Environmental Protection;

"notice of appeal" means a notice of objection filed pursuant to sec. 84 of the Act or sec. 17.1 of the Department of the Environment Act;

"panel" means a panel of the Board;

"party" means

(a) the appellant;
(b) the person whose decision is the subject of the notice of appeal;
(c) any person who the Board decides under sec. 9(2) of the Regulation should be allowed to make representations in respect of the subject matter of the notice of appeal; and
(d) for the purposes of these Rules of Practice, any person who the Board determines to be a party;

"Regulation" means the Environmental Appeal Board Regulation, Alberta Reg. 114/93.



Conduct

The Board has all powers necessary to conduct the fair, expeditious and impartial hearing of an appeal, including the following:

- to issue subpoenas authorized by law;
- to administer oaths and affirmations;
- to rule on the admissibility and relevancy of evidence;
- to seek full disclosure of evidence when the ends of justice would be served;
- to regulate the course of the hearing and the conduct of persons at the hearing;
- where appropriate, to inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage the use of such methods;
- to hold conferences for the settlement or simplification of the issues including, where appropriate, the use of preliminary meetings and alternative means of dispute resolution;
- to require the attendance at any meeting of at least one representative of each party who has authority to make commitments in regard to procedural matters and to negotiate concerning resolution of the issues in controversy;
- to dispose of procedural motions;
- to make or recommend decisions in conjunction with the panel;
- to call and question witnesses;
- where sanctioned by law, to impose appropriate sanctions against any party or person failing to obey a Board order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith; and
- to take any other action authorized by or exercise the powers of a commissioner under the *Public Inquiries Act.*



Precedent

In light of the discretionary nature of the Board's powers, it must decide each case individually in light of the material before it in that particular case. Over time, the Board's prior decisions may provide a useful benchmark to indicate how the Board will view particular types of cases. However, while the Board will generally try to decide similar cases similarly, as a matter of law it must decide each case on its own merits.

Miscellaneous

The Board shall consider all notices of appeal properly filed with it, and shall do so as expeditiously as possible.

All documents filed by a party to an appeal are available for inspection at the Board office by parties to the appeal and by the public.

Any party may appear on its own behalf or be represented by counsel or by an authorized representative.

Unless otherwise ordered by the Board, the hearing of an appeal is open to the public.

The Board may amend its rules, including such time limits as may be required, to give proper effect to the hearing of an appeal.

Any party may apply, at any time, for advice and direction as to how to proceed.

Notice of Appeal

A notice of appeal must contain the following information:

- **the provision of the Act under which the notice of appeal is submitted;**
- **the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision objected to;**
- **the grounds of appeal including the reasons why the appellant objects to the decision appealed;**
- **a description of the relief requested by the person objecting;**
- **the signature of the person objecting, or the person's agent; and**
- **an address in Alberta for service for the person objecting.**

Review by the Board

The Board shall consider the notice of appeal in relation to the question of its jurisdiction and the dismissal obligations set out in sec. 87(5).

An appeal must be dismissed, if in the Board's opinion:

- **the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the Natural Resources Conservation Board Act or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were considered; or**

- **the Government of Alberta has participated in a public review under section 35 of the Environmental Assessment and Review Process Guidelines Order under the Department of the Environment Act (Canada) in respect of all of the matters included in the notice of appeal.**

However, parties submitting a notice of appeal from issues that arose at these earlier hearings or reviews will have an opportunity to explain to the Board why the appeal submission is materially different from these other hearings.

The Board also has the power to dismiss the notice of appeal if:

- **it is determined that the appellant does not have standing or the Board does not have jurisdiction;**

- **it considers the notice of appeal to be frivolous or vexatious;**

- **the person who submitted the notice of appeal has failed to comply with a written notice under sec. 85; or**

- **the person who submitted the notice of appeal fails to provide security in accordance with an order under sec. 89 (3)(b).**

Request for Information

The Board may give written notice to the person who submitted the notice of appeal that it requires additional information. This information is to be submitted as set out in the written notice and within the time specified in the written notice (sec. 85).

The Board may provide to a person who submitted the notice of appeal, and any person who the Board considers appropriate, an opportunity to make representations to the Board with respect to which matters should be included in the hearing of an appeal (sec. 87 (3)). These representations may be made orally or in writing, at the Board's direction.

Determination of Issues

The Board shall determine which matters included in the notice of appeal will be included in the hearing of the appeal. The Board may consider certain matters before it makes its determination (sec. 87 (2)). Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter (sec. 87(4)).

Motions

All motions shall state the specific relief requested and the basis therefor. Except as provided below, they shall be made in writing.

Unless otherwise ordered by the Board, a motion may be made orally following reasonable notice to other parties during a preliminary meeting, a pre-hearing or an appeal hearing. After an opportunity for response, the Board may rule on the motion immediately or may direct that the motion and response be submitted in writing.

Preliminary Meeting

Prior to determining the issues on appeal and whether to proceed, the Board may schedule a preliminary meeting at which all parties may make representations on this issue. The Board will set the terms of reference for the preliminary meeting in advance and will notify all parties of the terms of reference in writing.



Site Visit

Prior to proceeding to a hearing, or during a hearing, the Board may, at the request of a party or on its own motion, schedule a site visit. The Board will set the terms of reference for the site visit in advance and will notify all parties in writing of the site visit and terms of reference for it.



Notice of Hearing

After the Board has considered the issues in sec. 87(2) and (5), it will determine whether to proceed with the appeal. At such time as the Board decides to proceed with an appeal, it shall fix a date for the hearing of the appeal, which shall not be more than 60 days after the date of determination to proceed.

The Board shall give written notice of the date of the hearing to the appellant, to the person whose decision is appealed and to the other parties to the appeal. The Board shall publish notice in any manner which it considers appropriate at least 45 days before the hearing. The Board retains the discretion to require any party to give this notice, or to publish it.

The notice of hearing shall contain the following information:

- **the date, time and place of the hearing;**
- **a summary of the subject matter of the notice of appeal;**
- **a statement that persons wishing to make representations on the matter before the Board must submit a request in writing to the Board;**
- **the deadline for submitting such a request in writing;**
- **the mailing address and fax number of the Board; and**
- **the location and time that any material filed with the Board will be available for examination by interested persons.**

Third Party Intervention

The rights of any party to the appeal process are determined by statute, these Rules, and other applicable law. Normally, special rights given to intervenors will be established only following their request to participate in the appeal in response to the Board's publication of a notice of hearing.

A request in writing shall contain the following:

- **the name, address, telephone and fax numbers of the person submitting the request;**
- **an indication whether the person submitting the request intends to be represented by a lawyer, and, if so, the name, address, telephone and fax number(s) of the lawyer;**
- **a summary of the nature of the person's interest in the subject matter of the notice of appeal; and**
- **the signature of the person submitting the request.**

Where the Board receives a request in writing, it shall determine whether the person submitting the request should be allowed to make representations in respect of the subject matter of the notice of appeal.

As a general rule, those persons or groups wishing to intervene must meet the following tests:

- **their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;**
- **the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;**
- **the intervention will not repeat or duplicate evidence presented by other parties; and**
- **if the intervention request is late, there are documented and sound reasons why the intervenor did not earlier file for such status.**

When the Board makes the determination as to whether or not the person submitting the request should be allowed to become a party, it shall give the person written notice of that decision. In the discretion of the Board, a person may be denied intervention in a matter in which he/she could have participated as a party, but failed in a timely fashion to avail himself/herself of the opportunity to do so. Those wishing to become involved in the appeal process must therefore make their intentions known to the Board as soon as possible.

The Pre-hearing Meeting

A General

When the parties to the appeal have been determined, the Board may, on its own initiative or at the request of any of the parties to the appeal, schedule one or more pre-hearing meetings prior to the date set for the hearing of the appeal. The purpose of a pre-hearing meeting is to facilitate the resolution of the appeal or to determine any of the procedural matters set out in the Regulation. Parties shall come to the pre-hearing fully prepared for a useful discussion of all issues involved in the appeal, both procedural and substantive, and authorized to negotiate and make decisions with respect thereto.

B Facilitation

Reasonable notice of the time, place and purpose of the pre-hearing meeting shall be given in writing to the parties and other persons, if any, who are participating or seek to participate in the appeal. A pre-hearing shall be held in person unless the presiding Board member concludes that personal attendance by him/her and the parties is unwarranted or impractical. In this instance, the pre-hearing may be held by telephone or other appropriate means.

Section 11 of the Regulation contemplates that one purpose of a pre-hearing is to facilitate the resolution of the appeal. The Board members have mediation training and, where possible, will attempt to facilitate a resolution of the appeal at a pre-hearing meeting. Alternatively, if it appears it would be productive, the Board may adjourn its hearing for a reasonable time to allow for third-party mediation.

The Board member who chairs the pre-hearing will not be a member of the panel that hears the appeal.

When the parties agree to a resolution of the notice of appeal at the pre-hearing meeting, the Board shall within 15 days after the pre-hearing prepare a report and recommendations that are signed by the parties and reflect the agreed upon resolution. The report and recommendations shall be submitted to the Minister to be dealt with according to the Act, and a copy of the report and recommendations will be sent to each party.



Where the parties do not agree to a resolution of the notice of appeal at the pre-hearing meeting, the Board in consultation with the parties may:

- determine a date for a future pre-hearing meeting before the hearing;
- admit any facts relevant to the hearing consented to by the parties;
- admit any evidence relevant to the hearing consented to by the parties;
- determine any matter of procedure;
- determine the order of witnesses for the hearing;
- determine the day to day conduct of the hearing;
- have the parties exchange documents and written submissions;
- determine any other matters for the hearing; and
- determine the issues for the hearing pursuant to sec. 87(2) and (3).

The Hearing

Written Submissions

Every party to an appeal must file a written submission with the Board and provide a copy to every other party at least 7 days before the date of the hearing.

Written submissions shall be given to all other parties.

A written submission shall contain:

- **a summary of the facts and evidence to be relied on by the party;**
- **a list of witnesses to be called on by the party and a summary of each witness' evidence; and**
- **the name, address, telephone and fax numbers of a lawyer or other agent acting on behalf of the party.**

Venue

Normally, a hearing will be held in a community most convenient to the parties and close to the location of the issue in question.

Swearing of Evidence

All parties proffering evidence shall do so under oath or affirmation, to be administered by a Board or staff member authorized to swear oaths.

Opening Statements

Unless the Board directs otherwise, at the beginning of every hearing each party shall give a brief opening statement that describes the issues that the party will address at the hearing. The statement should include an outline of the evidence the party intends to introduce, a list of witnesses, the topics to be covered, and the amount of time required.

The opening statements will be made in the following order: the appellant; the Director or Government representative at the hearing; and other parties.

Order of Presentation

Unless the Board directs otherwise, the evidence at a hearing shall be presented by the parties in the following order:

1. **the appellant;**
2. **other parties whose interest or position is, in the Board's opinion, similar to that of the appellant;**
3. **the Director or Government representative at the hearing;**
4. **other parties whose interest or position is, in the Board's opinion, similar to that of the Director;**
5. **the Board's witnesses, if any; and**
6. **the appellant, in reply.**

Expert Witnesses

A witness having technical or special knowledge, who is retained by the Board to give evidence, shall provide a written curriculum vitae of his/her qualifications and experience.

In hearings, the Board will not normally qualify a witness as an expert, but any witness with a degree of specialized knowledge should reference that knowledge on the curriculum vitae. Any party may challenge the qualifications of any witness having technical or special knowledge, before or during the course of his/her testimony.*

Curriculum vitaes will be filed with the Board prior to the hearing.

The Board, in its discretion, will determine the weight to be given each witness' testimony and the witness' qualifications and experience will be a factor in determining the weight to be given such testimony. The fact that evidence is deemed admissible does not mean that it will be determinative of the issue.

Evidence: Admissibility

The Chair shall admit any relevant oral or documentary evidence (such as hearing statements) that is not privileged. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the appeal more probable or less probable than it would be without the evidence. The Chair may, however, exclude evidence if its probative value is substantially outweighed by: the danger of unfair prejudice; confusion of the issues; or considerations of undue delay, waste of time, or needless presentation of repetitious evidence.

The fact that evidence is deemed admissible does not mean that it will be determinative of the issue.

*Paragraph revised in July 1995

Evidence: Confidential and Sensitive Information

Where there is full compliance with the relevant Evidence Acts, with any legislation dealing with privilege and with the Charter of Rights and Freedoms, the Chair may limit introduction of evidence or issue such protective or other orders that in his/her judgement are required to prevent undue disclosure of classified, confidential or sensitive matters which include, but are not limited to, matters of a national security, business, personal or proprietary nature. Where the Chair determines that information in documents containing classified, confidential or sensitive matters should be made available to another party, the Chair may direct the party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

If the Chair determines that the procedure described above is inadequate and that classified or otherwise sensitive matters must form part of the record in order to avoid prejudice to a party, the Chair may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to such matters.

Evidence: Written Testimony

The Chair may accept and enter into the record direct testimony of a witness made by a sworn written statement rather than by oral presentation at the hearing. A witness whose testimony is presented by a sworn written statement shall be available for cross-examination, as may be required.

Evidence: Cross-examination

Cross-examination shall be limited to the scope of the direct evidence and, subject to the discretion of the Chair, shall always be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Cross-examination will be permitted to the extent necessary for full and true disclosure of the facts. The Chair may, in the exercise of his/her discretion, permit inquiry into additional matters as if on direct evidence.

K

Burden of Proof

In cases in which the Board accepts evidence, any party offering such evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the Board will decide which evidence to accept and will generally act on the preponderance of the evidence.

L

Closing Arguments and Briefs

At the close of hearing and upon such terms as the Board may find reasonable, any party to the proceedings shall be entitled to file a written brief, propose findings of fact and conclusions of law, or do both. At the close of the hearing, the Chair will provide each party with an opportunity to make closing remarks. Any brief, proposed findings of fact and conclusions of law, and closing remarks shall be included as part of the record.

M

Closing of the Record

At the conclusion of the hearing, the record shall be closed unless the Chair directs otherwise. Once the record is closed, no additional evidence shall be accepted unless the Board decides the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Chair shall reflect in the record, however, any correction to the transcript approved by the panel.

Failure to Attend Proceedings

Where publication or notice of a preliminary meeting, a pre-hearing meeting or a public hearing has been given by the Board in accordance with these rules and statutory requirements, and a party does not attend the preliminary meeting, pre-hearing meeting or hearing, the Board may proceed in that party's absence and that party is not entitled to any further notice of that portion of the appeal unless the Board directs otherwise.

Unless excused by the Board for good cause shown, failure of a party to attend a proceeding, after being served with reasonable notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached in the proceeding and to any order or ruling with respect thereto.

Costs

Any party to a proceeding before the Board may make an application in writing to the Board for an award of costs on an interim or final basis. A party may make an application for all costs that are reasonable and are directly and primarily related to the matters contained in the notice of appeal in the preparation and presentation of the party's submission.

An application for an award of interim costs can be made by a party at any time prior to the close of a hearing of the appeal but after the Board has determined all parties to the appeal.

An application for interim costs shall contain sufficient information to demonstrate to the Board that interim costs are necessary in order to assist the party in effectively preparing its submission at a hearing or pre-hearing meeting.

An award of interim costs is subject to a redetermination in an award of final costs.

When an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing, if any, at a time determined by the Board.

The Board may make an award of final costs subject to the terms and conditions it considers appropriate.

Any decision to award costs to a party is at the discretion of the Board.

The Board's Report

Where the Board makes a decision (sec. 90) or proposes recommendations to the Minister (sec. 91), it shall prepare a decision or recommendation document containing:

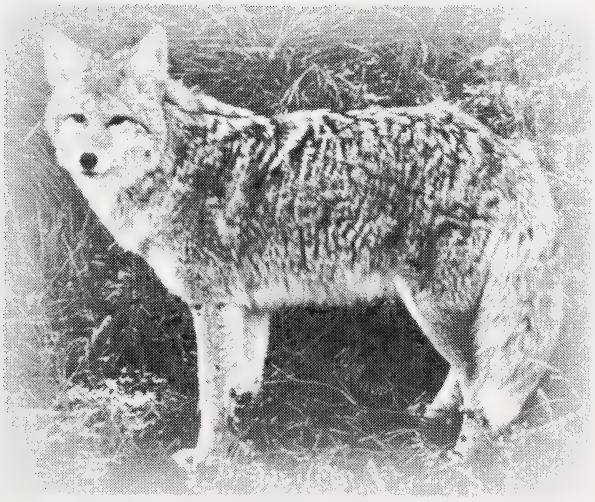
- **a statement of the issues to be decided;**
- **a summary of the evidence, including findings and conclusions and the reasons or basis therefor, on all material issues of fact, law or discussion presented on the record;**
- **the recommendations or the decision, including any dissent; and**
- **for administrative penalty or confidentiality appeals, the date upon which the decision will become effective or any further order the Board considers necessary for the purposes of carrying out the decision.**

The decision or recommendation of the Board shall be based upon a consideration of the whole record of the material properly before the Board.

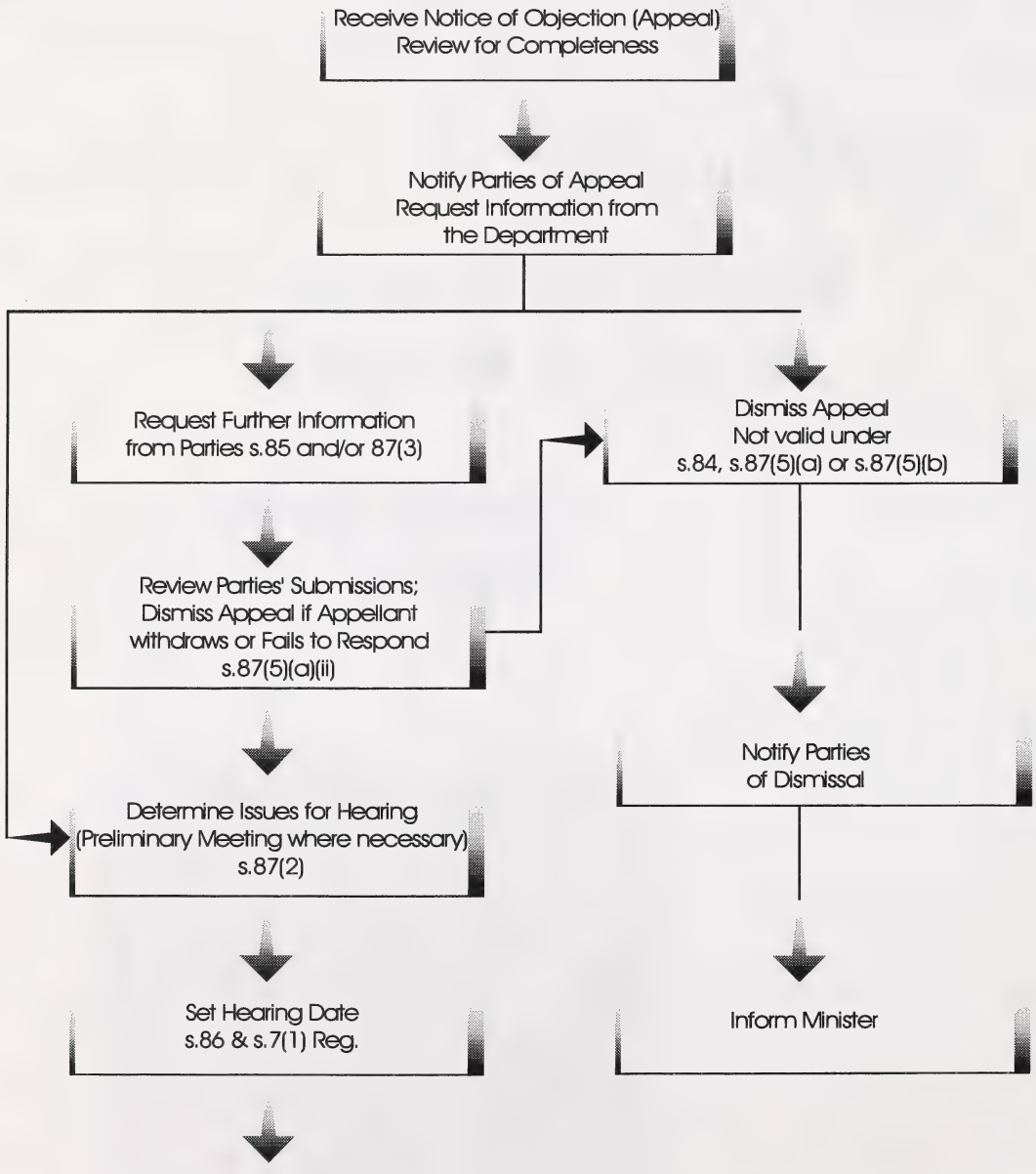


Alberta Environmental Appeal Board

Procedures Flowchart
Appendix B



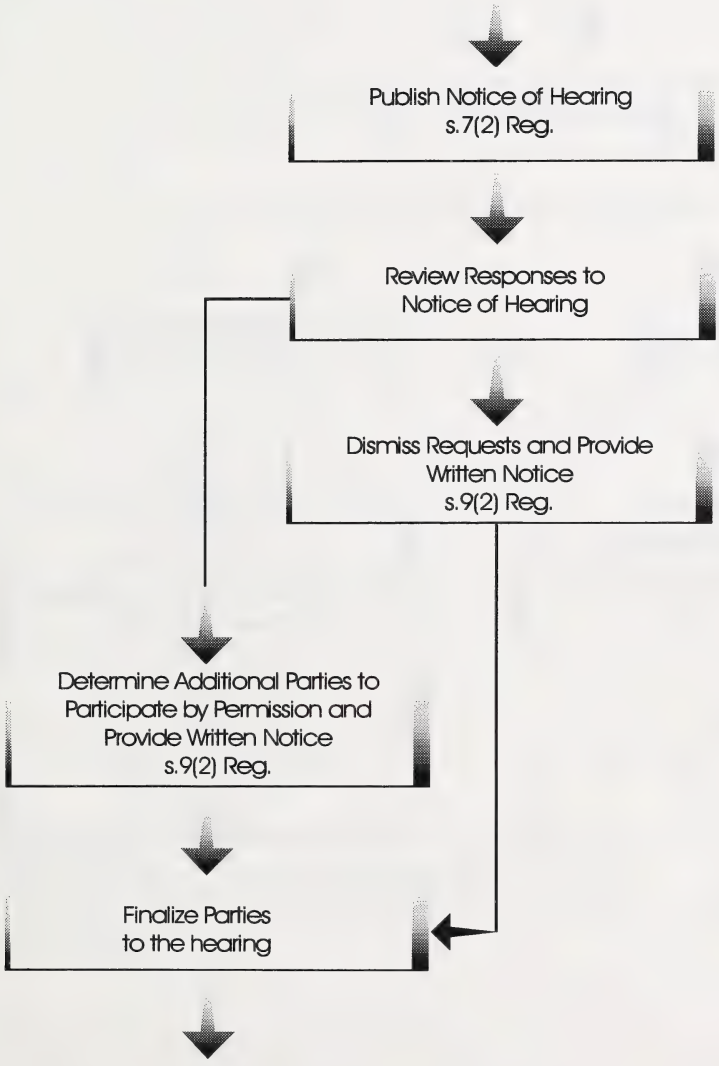
Environment Appeal Board Procedures



January 1996

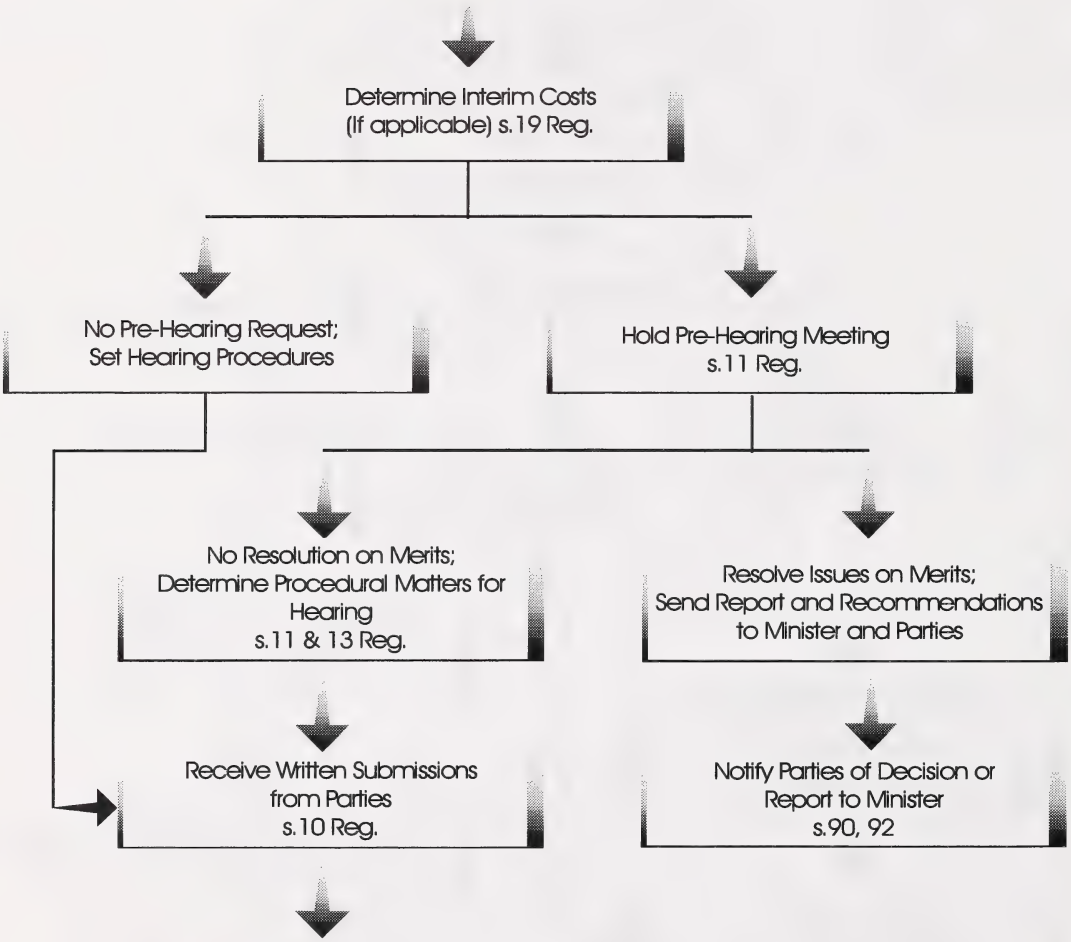
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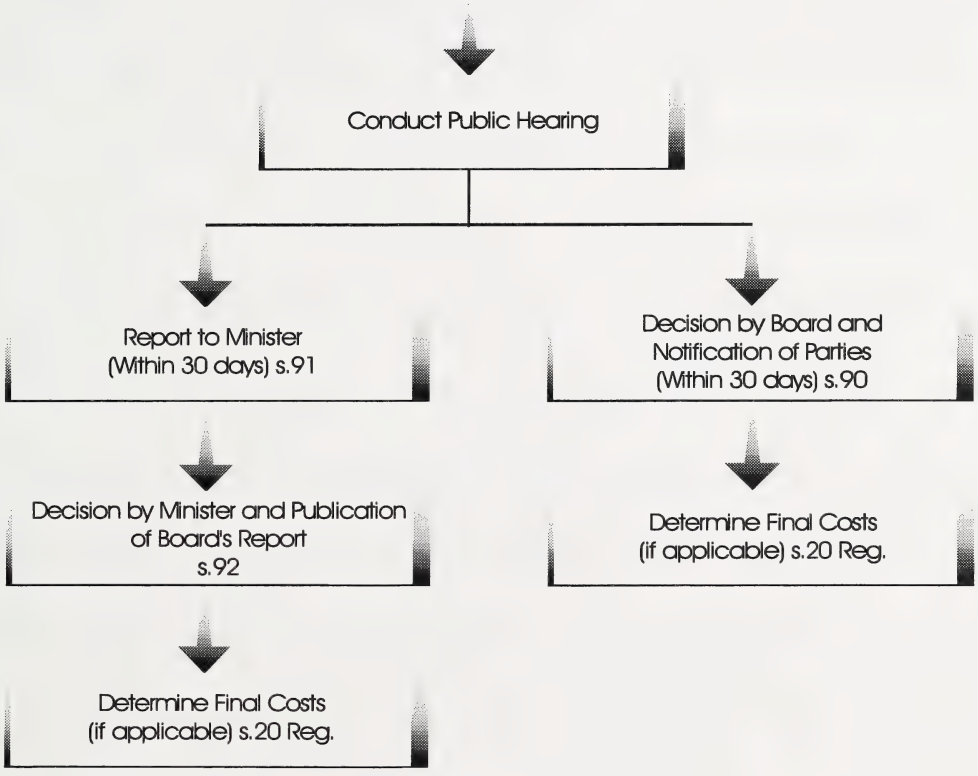
January 1996

Environment Appeal Board Procedures



January 1996

Environment Appeal Board Procedures



Note: This flowchart is intended to provide a general overview of the Board's procedures. This chart is not intended to provide legal guidance. For specific information, please consult the Act, regulations and the Rules of Practice of the Environmental Appeal Board.

January 1996

Notes

Notes

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